



United States
Department of
Agriculture

Farmers
Home
Administration

Washington
D.C.
20250

FmHA AN No. 1508 (1940)

December 3, 1986

SUBJECT: Protection for Purchasers of Farm Products

TO: All State Directors, State Directors-at-Large,
Farmer Programs Chiefs, District Directors and
County Supervisors

PURPOSE/INTENDED OUTCOME: This Administrative Notice (AN) is issued to provide guidance and instruction on field implementation of changes to the security requirements for farm products as created by Section 1324 of the Food Security Act of 1985 (Public Law 99-198). This section of the law, entitled "Protection for Purchasers of Farm Products," becomes effective December 23, 1986.

COMPARISON WITH PREVIOUS AN: No previous AN on this subject has been issued.

IMPLEMENTATION RESPONSIBILITIES: This Section provides uniformity and in many States, changes existing laws regarding a creditor's security interest in farm products and its validity with respect to buyers of those products in the ordinary course of business. Buyers in the ordinary course of business, commission merchants, and selling agents take farm products free and clear of any security interest created by a seller, except as provided by the new law.

This provision of the law provides for the Packers and Stockyards Administration (PSA) to certify the creation of individual State "central filing systems" (CFS), which will use a new system of financing statements to show a creditor's secured interest in a farm product. In those States where adopted, this new statement will take precedence over the existing State system, usually the Uniform Commercial Code (UCC), in enforcing security interest in farm products including crops, animals, and animal products (but not equipment) against buyers in the ordinary course of business, commission merchants and selling agents. A creditor must file under the UCC also if equipment is part of the loan collateral. In those States opting not to certify a CFS, State laws (usually the UCC) will establish the lien system, however, creditors are required to give a purchaser of the farm product prior written notification of the lien, if such creditor wishes to pursue collection through a buyer.

The Farmers Home Administration (FmHA) has decided that it will not file security instruments under the CFS financing statement system in those States where it is adopted. Further, FmHA County Supervisors need not meet the prior notification of purchaser's requirement that is in effect in all other areas. Security filings under the existing systems will be continued.

EXPIRATION DATE: November 30, 1987

FILING INSTRUCTION: Preceding
FmHA Instruction 1940-G



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Secretary of Agriculture, Washington, D.C. 20250

Making a full response to the new security provisions implemented by Section 1324 of the Food Security Act of 1985 would require an investment of resources which FmHA is not prepared to make. FmHA's rate of recovery on third party actions has been historically low. A partial response would be ineffective and uneconomical. Greater emphasis must be placed on borrower accountability for security, as required by FmHA Instructions 1924-B, 1962-A, and the utilization of Form FmHA 1962-1, to establish our security and preempt conversion events.

This policy will impact on FmHA Instructions as follows:

1. FmHA Instruction 1924-B, Section 1924.57(b): In order to establish effective control over conversions, Form FmHA 1962-1 must be completed in all applicable cases, in accordance with the Forms Manual Insert (FMI) and other National/State announcements.
2. FmHA Instruction 1962-A, Sections 1962.5, 1962.6, and 1962.9; 1941-B, Sections 1941.57, 1941.60, and 1941.63; 1941-A, Section 1941.19; 1945-D, Section 1945.169: Require that County Offices adequately secure loans under state law. These requirements will be continued; however, security instruments will not be filed according to a CFS. Lien searches will be extended to the CFS system, however, when such systems become available. The procedure will be established on an individual State basis and incorporated into respective State Instructions as the CFS systems are certified by the PSA.
3. FmHA Instruction 1962-A, Section 1962.13: Requires County Offices to send out lists of borrowers to business firms in a trade area, if the firms request such information, and allows dissemination of the lists without solicitation. This Instruction will not be changed. These lists are intended for information purposes only, and should not be intended to be a substitute to meet the prior notification of purchasers requirement.
4. FmHA Instruction 1962-A, Section 1962.49: Third party purchasers of farm products, which includes crops, livestock and livestock products, will not be pursued when a valid claim cannot be established because of noncompliance with CFS or prior notification requirements. If an unapproved disposition of farm products security has occurred, and the County Supervisor is proceeding under FmHA Instruction 1962-A, Section 1962.18 (a)(2), prior to third party demand and/or civil action, the circumstances of the event will be transmitted to the State Office to review the validity of the claim. The State Office will make a determination whether the facts in the case support a claim and resulting action. The advice of the Office of General Counsel (OGC) will be solicited when appropriate, in accordance with FmHA Instruction 1962-A, Section 1962.49(b)(3)(iii).

5. FmHA Instruction 1980-8, Sections 1980.108(a), 1980.109(b) and 1980.130: Lenders holding or requesting FmHA loan guarantees will be expected to secure the collateral and service the security within what is "customary" for their local lending community, and no less adequately than their respective non-guaranteed portfolios. The guaranteed lender is held to a reasonable, prudent lender standard. Lenders should be told that FmHA will not be implementing any CFS requirements, but that it is up to each lender to decide what the reasonable, prudent lender in the area would do.

We anticipate the possibility that some States may develop, and have certified by PSA, CFS systems that are then duplicated for their UCC system. To file a security interest on farm products under that UCC system would require the same format as the CFS. In these cases the State Director may request authority to participate in the respective CFS system. A full rationale should accompany such requests.

Questions on the above procedures and other matters relating to the implementation of the "Protection for Purchasers of Farm Products" may be communicated through/by State Offices to the National Office, Assistant Administrator Farmer Programs on FTS/Comm. (202) 475-5431.



VANCE L. CLARK
Administrator

Sent by Electronic Mail on 12/3/86 at 10:22 by DASD (IMPS). The State Director should advise other personnel as appropriate.